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J & C New Poly Catering Sdn Bhd v TTMP Bakun Consortium Sdn Bhd (Malayan Banking Bhd, Garnishee & Anor)

HIGH COURT (MIRI) — SUIT NO 22–22 OF 2005(MR)
ABDUL AZIZ ABDUL RAHIM J
B 21 JULY 2005

Civil Procedure — Injunction — Interim injunction — Restrain garnishee from complying with garnishee order — Application to set aside — Whether court had jurisdiction to grant injunction under s 54(b) of Specific Relief Act 1950 — Whether
C *applicant had locus standi to move court for injunction on behalf of the defendant*

The defendant by way of summons in chambers and based on a certificate of urgency applied for an ex parte interim injunction to restrain the first garnishee ('the
D garnishee') from complying with the garnishee order absolute dated 22 June 2005 ('the order'). The order was obtained by the plaintiff against the garnishee for the sum of RM604,796.93 kept in the defendant's current account at the garnishee's bank in Bintulu. The defendant's ex parte application was supported by an affidavit to set aside the order ('the application'). On the facts deposed in the applicant's affidavit in
E support and in the defendant counsel's certificate of urgency, the court granted the ex parte interim injunction order to the defendant. At the inter partes hearing, it was contended that the court had no jurisdiction to grant the injunction under s 54(b) of the Specific Relief Act 1950 ('the Act').

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Held:

(1) The general rule is that the High Court would not issue an injunction to restrain the execution of another High Court order. However, the High Court is always seized of inherent jurisdiction to do justice in each case that comes
G before it. If it was apparent on the face of the records and on the facts and circumstances of the case that injustice was being perpetrated in the case, the court should not remain silent and let injustice prevail. In such a situation, the court may fall on its inherent powers to correct the injustice, unless there is a clear statutory provision that restrains the court from exercising its discretion (see para 24).

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(2) Judicial notice must be taken as a matter of practice whereby applications for garnishee order are made before the senior assistant registrar ('SAR') or deputy registrar ('DR'). The decision of the SAR and DR is appealable to a judge in chambers which is provided under O 56 of the Rules of the High Court 1980. If the decision is appealable to a judge in chambers, then the judge can review
I the SAR or DR's decision and if the circumstances warrant it, can even order a stay (see para 26).

(3) The applicant who had set aside the order was only a shareholder. It was not in dispute that the money which was the subject of the order belonged to the defendant and not to the applicant. So it was the company's property.

Accordingly, the applicant had no locus standi to move the court for an injunction on behalf of the defendant and therefore the ex parte injunction was cancelled (see paras 33 and 35).

[Bahasa Malaysia summary

Defendan memohon melalui saman dalam kamar dan satu perakuan segera bagi satu injunksi interim ex parte untuk menghalang yang digarnis pertama ('yang digarnis') daripada mematuhi perintah garnisi mutlak bertarikh 22 Jun 2005 ('perintah itu') yang diperolehi oleh plaintif terhadap yang digarnis yang memerintahkan yang digarnis untuk membuat bayaran kepada plaintif sebanyak RM604,796.93 yang disimpan di dalam akaun semasa defendan dengan bank yang digarnis di Bintulu. Permohonan ex parte defendan disokong oleh satu afidavit oleh pemohon untuk mengetepikan perintah tersebut ('pemohonan itu'). Dari fakta-fakta yang dideposkan di dalam afidavit sokongan pemohon dan perakuan kesegeraan peguam defendan, mahkamah memberikan perintah injunksi interim ex parte kepada defendan. Dalam pendengaran inter-partes, ianya telah dihujahkan bahawa mahkamah tidak mempunyai bidang kuasa untuk memberikan injunksi di bawah s 54(b) Akta Relif Spesifik 1950 ('Akta itu').

Diputuskan:

(1) Mengikut rukun am, Mahkamah Tinggi tidak akan mengeluarkan injunksi untuk menghalang pelaksanaan perintah Mahkamah Tinggi yang lain. Walau bagaimanapun, Mahkamah Tinggi memiliki bidang kuasa sedia ada untuk memberi keadilan kepada setiap kes yang dibentangkan. Sekiranya ia jelas daripada rekod dan sekiranya ianya sama pada fakta-fakta dan keadaan kes bahawa ketidakadilan telah berlaku dalam kes tersebut, mahkamah tidak patut gagal berbuat apa-apa dan membiarkan ketidakadilan tersebut berterusan. Dalam keadaan sebegini, mahkamah boleh menggunakan kuasa sedia adanya untuk memperbetulkan ketidakadilan, kecuali terdapat peruntukan statutori yang jelas yang menghalang mahkamah daripada menggunakan budi bicaranya (lihat perenggan 24).

(2) Mahkamah harus mengambil pemerhatian kehakiman sebagai kebiasaannya, permohonan untuk perintah yang digarnis dibuat di hadapan penolong kanan pendaftar ('PKP') atau timbalan pendaftar ('TP'). Keputusan PKP dan TP boleh dirayu kepada hakim dalam kamar. Perkara ini diperuntukkan di bawah A 56 Kaedah-Kaedah Mahkamah Tinggi 1980. Jika keputusan itu boleh dirayu kepada hakim dalam kamar maka hakim itu boleh mengkaji semula keputusan PKP atau TP tersebut dan jika keadaan mewarankannya, bolehlah diperintahkan satu penggantungan terhadap perintah itu (lihat perenggan 26).

(3) Pemohon yang mengenepikan perintah hanya pemegang saham. Ia juga tidak dipertikaikan bahawa wang yang menjadi subjek perintah itu adalah milik defendan dan bukan pemohon. Oleh itu, ia adalah harta syarikat. Sewajarnya, pemohon tiada locus standi untuk memohon kepada mahkamah untuk injunksi bagi pihak defendan dan oleh itu injunksi ex parte itu dibatalkan (lihat perenggan 33 dan 35).]

Notes

For cases on interim injunction, see *Mallal's Digest* (4th Ed, 2004 Reissue) paras 2769–2830.

Cases referred to

Bina Satu Sdn Bhd v Tan Construction [1988] 1 MLJ 533 (refd)
Cotton Corp of India v United Industrial Bank AIR 1983 SC 1272 (refd)
First Consolidated Sdn Bhd v Padu Ehsan Sdn Btut & Anor and another suit [1994] MLJU 571 (refd)
Hong Kong and Shanghai Banking Corp v Goh Su Liat (Telecommunication Authority of Singapore, Garnishee) [1986] 2 MLJ 86 (refd)
Jasa Keramat Sdn Bhd & Anor v Monatech (M) Sdn Bhd [1999] 4 MLJ 637 (refd)
Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors [1995] 1 MLJ 193 (refd)
Loo Chay Meng v Ong Cheng Hoe (Gamuda Sdn Bhd, garnishee) [1990] 1 MLJ 445 (refd)
Macaura v Northern Assurance Co Ltd [1925] AC 619 (refd)
Malaysia Land Investment Co (Pte) Ltd v Sathask Realty Sdn Bhd & Ors [2001] 1 MLJ 451 (refd)
Oversea Chinese Banking Corp Ltd v Sindoma Realty Sdn Bhd and other applications [1989] 1 MLJ 377 (refd)
Syawal Enterprise Sdn Bhd & Anor v Dayadiri Sdn Bhd [1993] MLJU 558 (refd)
Tai Choi Yu v Syarikat Tingan Lumber Sdn Bhd [1998] 4 MLJ 275 (refd)
United Investment and Finance Ltd v Tee Chin Yong & Ors [1967] 1 MLJ 31 (refd)
United Malayan Banking Corp Bhd v Syarikat Perumahan Lunas Sdn Bhd [1988] 1 MLJ 546 (refd)
United Overseas Bank Ltd v Chung Khiaw Bank Ltd [1968] 2 MLJ 85 (refd)
Woolux Sdn Bhd & Anor v TTMP Bakun Consortium Sdn Bhd Suit No: 22-60 of 2004, (MR) (refd)

Legislation referred to

Civil Procedure Code [India] O XXXIX r 2
Rules of the High Court 1980 O 1 r 4(2), O 29 r 1(2A), O 56
Specific Relief Act 1950 s 54(b)
Specific Relief Act 1963 [Indian] s 41(b)

Shankar Ram (Keith Chin with him) (Thomas, Shankar Ram & Co) for the plaintiff/judgment creditor.
KY Lin, Rajesh Jethi with him (Kadir Wong Lin & Co) for the defendant/judgment debtor.
ST Lau (David Allan Sagah & Teng Advocates) for the first garnishee.

Abdul Aziz Abdul Rahim J:

[1] On 5 July 2005, the defendant by way of summons in chambers ('encl 25') and based on a certificate of urgency applied for an ex parte interim injunction to restrain the first garnishee ('the garnishee') from complying with the garnishee order absolute

dated 22 June 2005 ('the order'). The order obtained by the plaintiff against the garnishee for the sum of RM604,796.93 was kept in the defendant's current account at the garnishee's bank in Bintulu.

[2] The defendant's ex parte application is supported by an affidavit by Udam @ George Adam Talek affirmed on 1 July 2005 ('Udam's affidavit').

[3] In its ex parte application, the defendant stated two main grounds. Firstly, that the defendant had serious triable issues in its application to set aside the default judgment dated 23 April 2005 (including setting aside the service of the plaintiff's writ of summons) obtained by the plaintiff against the defendant; and which formed the basis for the Order. Also in relation to the first ground, the defendant stated that it had defence on merits. In particular, the defendant stated that the service of the writ on the defendant at their registered office at Lot 1070, 2nd Floor, Jalan Bintang Jaya 1, Bintang Jaya Commercial Centre Miri was irregular as the said office was deserted and untenanted at the time of service and this fact was known to the plaintiff's counsel at all material times. The defendant also stated that from the sum of RM593,626.06 claimed by the plaintiff in its statement of claim, the claim for RM413,626.06 was suspicious or non-existent because the plaintiff had pleaded in paragraph 4 of its statement of claim that the defendant had promised to pay that sum to the plaintiff on or before 31 October 2004; but the defendant stated that the invoices which supported the claim were only issued in 2005. The defendant also contended that another claim by the plaintiff was the sum of RM180,000. This sum which the plaintiff claimed to have loaned to the defendant was also suspicious or non existent because the plaintiff was only incorporated on 15 April 2004 whereas the said sum of RM180,000 was said to have been loaned by the plaintiff to the defendant in October 2003; before the defendant had been incorporated.

[4] The second ground forwarded by the defendant was that the defendant had serious triable issues in respect of its application to set aside the order. The defendant contended that the order ought to be set aside ex dubito justitae because it was based on an irregular default judgment and also on the defence of merits against the plaintiff's claim. The defendant contended, as regards the order, the plaintiff in law cannot attach the defendant's money in a bank account as it is not a debt owing from the bank to the defendant.

[5] In Udam's affidavit in support, the deponent deposed that he was one of the shareholders in the defendant's company and the matters deposed in the affidavit were within his personal knowledge and the information was obtained from the files, documents or records in his possession or to which he had access. At this juncture, it is to be noted that nowhere in the affidavit did the deponent affirm that he had deposed the facts in the affidavit on behalf of the defendant company or that he had authority or been so authorized to affirm that affidavit. It is also pertinent to note that in paragraph 2 of Udam's affidavit, the following had been deposed:

> I affirm this affidavit pursuant to the provisions of O 29 r 1(2 A) rules of the high court 1980 and in support of my application for ex parte order for an interim injunction against the abovenamed first garnishee.

[6] I draw the attention of this fact in Udam's affidavit because at the inter partes hearing of the defendant's application on 14 July 2005 at the Bintulu High Court, the parties having consented to it, counsel for the plaintiff raised the issue of Udam George Talek's authority to make the application on behalf of the defendant's company. Instead Learned counsel for the plaintiff submitted that Udam George Talek filed the ex parte application on his own behalf. I will return to this point in the latter part of this judgment.

[7] At paragraph 4 of Udam's affidavit in support, the deponent, Udam @ George Adam Talek stated that he was contacted by the Branch Manager of the first garnishee that the plaintiff had obtained an absolute garnishee order dated 22 June 2005 against the defendant to garnish the sum of RM604,796.93 deposited in the defendant's Current Account No 5-11065-552215-9 with the first garnishee and the sealed copy of the order had been served on the first garnishee's counsel. The deponent also deposed at paragraph 5 of his affidavit that the same Branch Manager had informed him that the first garnishee would abide by the said order unless there is a court order restraining the first garnishee from paying, disbursing or releasing the said sum to the plaintiff. He also affirmed in the affidavit that upon being informed of the matter, he immediately appointed Messrs Kadir, Wong, Lin & Co Miri to enter appearance for the defendant 'in this suit'; and this was accordingly done by Messrs Kadir, Wong, Lin & Co on 27 June 2005. In the same paragraph, the deponent stated that he was advised by his counsel that an interim injunction was necessary to restrain the first garnishee from releasing the said sum of money to the plaintiff pending the defendant's application to set aside the judgment in default and the order obtained by the plaintiff against the defendant. At paragraph 9 of his affidavit in support of the ex parte application, Udam deposed that he had been advised by his counsel that the default judgement against the defendant ought to be set aside as the service of the plaintiff's writ of summons on the defendant was irregular and that the defendant had defence on merits against the plaintiff's claim.

[8] As regards the irregularity of service of the plaintiff's writ of summons on the defendant, Udam deposed in paragraph 10 of his affidavit in support that the plaintiff's counsel, Messrs Suhaili Bong Advocates who acted for the plaintiff in this suit, also acted for the defendant in another suit filed in the High Court at Miri. The suit number was 22–60 of 2004 (MR) and is currently ongoing between Woolux Sdn Bhd & Anor v TTMP Bakun Consortium Sdn Bhd. Udam also stated in his affidavit that Messrs Suhaili Bong Advocates was appointed by one Abdul Majid Rana, the Director of the defendant to act for the defendant in that suit. It was contended in the same paragraph of Udam's affidavit that due to this fact, Messrs Suhaili Bong Advocates who was also acting for the plaintiff in this suit (Note: at the inter partes hearing of the defendant's interim injunction application, the plaintiff had filed a notice of change of solicitors and appointed Messrs Thomas, Shankar Ram & Co, Advocates to act on its behalf in this suit, replacing Messrs Suhaili Bong, Advocates) had knowledge of the internal working arrangement of the defendant and that the defendant's registered office at Lot 1070, 2nd Floor, Jalan Bintang Jaya 1, Bintang Jaya Commercial Center, Miri was unmanned, deserted and untenanted. Therefore, it was contended that when the then plaintiff's counsel, Messrs Suhaili Bong, Advocates served the writ of summons on the defendant on 11 April 2004 at the

defendant's registered office at Bintang Jaya Commercial Centre the then plaintiff's counsel knew that the defendant's registered office was closed. Accordingly, it was also contended that the plaintiff had acted mala fide and had abused the court's rules, relating to service of the plaintiff's claim against the defendant. It was further deposed at paragraph 12 of Udam's affidavit that at all material times he was based in Kuching and that he and the Directors of the defendant could not have possibly been aware of the plaintiff's claim.

[9] As to the defence on merits, the facts deposed are at paragraph 14 of Udam's affidavit. It was affirmed that the total claim by the plaintiff against the defendant was in the sum of RM593,626.06. However this sum as stated in the affidavit was suspicious. It was said in the same paragraph of the affidavit that the plaintiff had claimed the defendant had promised to pay RM413,626.06 of the total sum claimed on or before 31 October 2004. But the invoices for this amount were only issued in 2005. So the deponent contended that it was impossible for the defendant to make a promise to the plaintiff to pay for a debt which was not even in existence then. It must be noted that the invoices were not exhibited in Udam's affidavit but the plaintiff had particularized the invoices in paragraph 2 of its statement of claim.

[10] Paragraph 14 (iii) of Udam's affidavit also contained an averment that the sum RM180,000 (which was the other part of the total sum) claimed by the plaintiff in paragraph 3 of its statement of claim was also suspicious. Udam deposed that the plaintiff had alleged in its statement of claim that the said sum was advanced to the defendant as capital sum and loaned to the defendant in October 2003. But, Udam said in his affidavit that the defendant was only incorporated on 15 April 2004. So it was contended that the claim as to the advance of the capital sum of RM180,000 was suspicious, flawed and defective because the advance or loan was made to a non existent company then. The defendant was not yet incorporated in 2003. The evidence of the date of the defendant's incorporation was exhibited in exh 'GAT-1', a copy of the company search conducted on the defendant on 30 June 2005 in Udam's affidavit in support.

[11] As regards merits of the application to set aside the order against the first garnishee, it was averred in Udam's affidavit in support, at paragraph 15 that the order ought to be set aside ex debitio justitae because the order was obtained based on an irregular default judgment and the money which the court order seeks to attach and keep in the defendant's current account with the first garnishee was not a debt owing from the first garnishee bank to the defendant.

[12] On the facts deposed in Udam's affidavit in support and based on the defendant counsel's certificate of urgency, I granted an ex parte interim injunction order to the defendant on 5 July 2005. For the record, however, I indicated, at the hearing of the ex parte application, that I would prefer to have the matter heard inter partes because the garnishee order was already made absolute. But the learned counsel for the defendant urged the court to hear the application ex parte because of the urgency of the matter. The urgency of the application was averred in paragraphs 18 to 23 of Udam's affidavit.

[13] At the inter partes hearing of the defendant's application on 14 July 2005 at the Bintulu High Court, the plaintiff was represented by a new legal firm. The plaintiff had also filed an affidavit in opposition (1) affirmed by Chen Thian Lin, the Director of the plaintiff on 11 July 2005 ('Chen's affidavit). In his affidavit, Chen said that the defendant's ex parte application was bad in law and in breach of O 29 r 1 of the Rules of the High Court 1980 ('the RHC') and s 54 of the Specific Relief Act 1950 ('the Act'). It was also averred that there was no real sense of urgency for the application and the defendant or its solicitor ought to have notified the plaintiff of the application. Chen also affirmed that Udam's affidavit in support of the defendant's ex parte application was bad in law as it contained baseless allegations and the deponent, Udam, had no authority or locus standi and even personal knowledge of the matters deposed of in his affidavit. It was also averred in paragraph 6 of Chen's affidavit that the plaintiff's writ of summons and statement of claim were duly served on the defendant at the defendant's registered address at Lot 1070, 2nd Floor, Jalan Bintang Jaya 1, Bintang Jaya Commercial Center Miri by the process server, known as Ahmad Zaini bin Zaidin on 11 April 2005 at about 2.30pm. The said Ahmad Zaini had also affirmed an affidavit of service dated 12 April 2005 — see encl (4). An extract search copy obtained from the Registrar of Companies in Kuching on 8 July 2005 was exhibited as exh 'CTL-1' in Chen's affidavit to show that the defendant's registered address was as stated above and had not changed at the time service of the writ and the statement of claim was effected on the defendant. Chen also averred in his affidavit of opposition (1) that Udam & George Adam Talek knew about the ongoing court proceedings against the defendant. Evidence of this knowledge was exhibited by Chen in his affidavit exh 'CTL-2', a photocopy of the letter dated 8 Jun 2005 which Udam @ George Adam Talek wrote to the Deputy Registrar of the High Court at Miri about the proceedings in this case. At paragraph 12 of his affidavit in opposition (1), Chen also deposed that Udam @ George Adam Talek had not made full and frank disclosure of the material fact at the hearing of the ex parte application in that he had failed to disclose to the court that he was removed as director of the defendant's company by the Board of Directors, Mr Majid Rana and Mr Han Yee. This fact as to the removal of Udam as Director of the defendant was contained in the minutes of the extraordinary general meeting ('EGM') of the defendant's company, held on 17 September 2004. A copy of the minutes of this meeting was exhibited as exh 'CTL-3' in Chen's affidavit.

[14] At paragraph 15, he further averred that on the date of his affirmation of the affidavit, the sealed copy of the ex parte summons in chambers and the ex parte injunction had not been served on the plaintiff's counsel. The plaintiff's counsel conducted a file search at the Miri High Court and obtained copies of the summons and the injunction order from the court's file. It was alleged that the defendant's counsel had failed to disclose to the court that they had been further notified about the positions taken by the plaintiff; the court has no jurisdiction to grant the injunction.

[15] On the above circumstances, the learned counsel for the plaintiff made the following submissions at the hearing of the inter partes injunction.

[16] The first submission was that the court had no jurisdiction to grant the injunction. Learned counsel referred the court to s 54(b) of the Act which provides that an injunction cannot be granted — '(b) to stay proceedings in a court not subordinate to that from which the injunction is sought;'. In relation to this, he cited the case of *Bina Satu Sdn Bhd v Tan Construction* [1988] 1 MLJ 533. In that case the court was invited to consider whether s 54(b) of the act has the effect of excluding or watering down the court's inherent jurisdiction to grant an order restraining the abuse of its process. Having considered the relevant provisions of the Act and the authorities referred on this point, as well as the Indian decision of *Cotton Corp of India v United Industrial Bank AIR* 1983 SC 1272 which discussed the effect of the old s 56(b) and the new s 41(b) of the Indian Specific Relief Act 1963 which is in pari materia with our s 54(b) of the Act, the court held that 'by inherent powers and by administrative rules, the High Court may interfere with the proceedings of the subordinate courts but it may not stay proceedings of a court superior or even of co-ordinate jurisdiction to it. In the same passage of the judgment (see p 535), the same court went on to hold that, following the learned judge's view in the *Cotton* case and the views of other Indian judges on the old s 56(b) of the Indian Specific Relief Act 1963 where the section makes reference to an injunction imposed on the other court and not in respect of an injunction imposed on the parties to the litigation or intended litigation, our s 54(b) of the Act, which is in pari materia with our old or repealed s 56(b) of its Indian counterpart, should be interpreted in the same way. What this means is that the court in *Bina Satu* case accepted the view that pursuant to s 54(b) of the Act, a High Court may interfere with the proceedings of a court subordinate to it but may not do so as regards to a proceeding in another High Court or even a court superior to it; and that under the similar section a High Court cannot issue an injunction to restrain another court but may issue injunction to restrain parties to a litigation or intended litigation.

[17] The holding in *Bina Satu* on this point was followed by other High Courts in later cases (see *Oversea Chinese Banking Corp Ltd v Sindoma Realty Sdn Bhd and other applications* [1989] 1 MLJ 377).

[18] Counsel for the plaintiffs also cited a number of Court of Appeal decisions on the same point. The first case was*Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193 where the court held that both cases; Tan Suan Choo and *Bina Satu* had correctly stated the law on the injunction. The second case is*Jasa Keramat Sdn Bhd & Anor v Monatech (M) Sdn Bhd* [1999] 4 MLJ 637 where the court held that, after having regard to the decisions in *Tan Suan Choo*, *Bina Satu* and *Keet Gerald*, the authorities did not authorize one branch of the High Court to interfere with the proceedings properly seized by another branch of the High Court. *Jasa Keramat* also approved and affirmed the cases of *Tan Suan Choo* and *Bina Satu* as authorities for the proposition that s 54(b) of the Act prohibits the grant of an injunction to stay proceedings in a court of co-ordinate jurisdiction and that the section deals only with permanent and not temporary injunction; but that section does not bar the grant of an injunction against a party to the action as opposed to one directed against the court.

[19] Learned counsel for the defendant on the other hand submitted that I had the jurisdiction to grant the injunction even though the order had already been made absolute. He argued that the injunction was only an interim injunction and there were authorities to show the court may set aside a garnishee order which had been made absolute. As to the latter he referred the court to several cases. The first case was *Hong Kong & Shanghai Banking Corp v Goh Su Liat (Telecommunication Authority of Singapore, Garnishee)* [1986] 2 ML] 86, a decision of the Singapore High Court. In that case the court set aside, on appeal by the judgment debtor, a garnishee order absolute and ruled, inter alia, that the court can hear a judgment debtor's application under its inherent powers and make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the court. The second case was *First Consolidated Sdn Bhd v Padu Ehsan Sdn & Anor and another suit* [1994] 4 CLJ 668. There the issue was whether the DR was functus officio after she had made the garnishee order absolute and therefore cannot review the order on application by the garnishee to set aside the order. It was argued in that case that the garnishee order absolute made by the DR was a final order and therefore the DR was functus officio and cannot review the order. On appeal by the garnishee on the DR's refusal to review the order and dismissing the garnishee's application to set aside the garnishee order, the court held, allowing the appeal, that the DR, on the facts and circumstances of the case, was not functus officio and had the jurisdiction to review her own orders. At p 670 of the report, the court said as follows:

> by virtue of the view that I take on the facts as disclosed in the affidavits and the notes of the proceedings, it seems clear to me that the hearing in the absence of the garnishee's counsel and its witness is an ex parte hearing and the order made on such a hearing was an ex parte order even though the application so heard is not an ex parte application. As I am of the view that it was an ex parte order the court has jurisdiction by O 32 r 6 of the Rules of the High Court 1980 to set it aside (see *Loo Chay Meng v Ong Cheng Hoe (Gamuda Sdn Bhd; garnishee)* [1990] 1 MLJ 445]. In the circumstances, I am of the view that the Deputy Registrar erred in ruling that she was functus officio and no longer has jurisdiction to entertain the sic (encl 251).
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> Further, even assuming O 32 r 6 is not applicable in an O 49 situation, the court is entitled to invoke its inherent jurisdiction powers under O 92 to prevent injustice.

[20] In that same case, the court expressed approval and agreed with the views of the learned Mr Justice VC George in *Loo Chay Meng*, that 'if O 32 r 6 [of the Rules of the High Court 1980] cannot be applied in an O 49 situation then we have a situation of 'a lacuna on the face of the rules which caused procedural injustice 'in that it cannot be said that the' rules contain provision making available sufficient remedies.' In my judgment, in that kind of situation and if there is injustice, the court is not entitled to but is obliged to make any order as may be necessary to prevent injustice.'

[21] As regards the granting of the interim injunction, the Learned counsel for the defendant made reference to passages in *Nelson's Law of Injunctions* (4th Ed, 2003) published by Law Publishers (India) Pvt Ltd, and submitted that the court has the power to grant interim injunction to stay or restrain another High Court order. The first passage relied on by the defendant is found at p 658 of the works and reads:

it is not correct to say that under O XXXIX r 2, the court would lose the jurisdiction once it is shown that defendant had obtained an earlier decree and was proceeding with execution. The word 'injury' used by r 2 is to be understood with respect to the right find remedy sought by the plaintiff. Only because a defendant is a decree-holder, it does not follow that the plaintiff is not entitled to complain about an injury which calls for protection from the court in a suit. Cases can be conceived where the defendant is armed with decrees which are nullities or obtained upon fraud or mischief or which are not binding on the rights or interests of the plaintiff for any reason. It is not necessary to make an exhaustive detail on the topic for suffice it to say that even under the provisions of s 44 of the Evidence Act, a party has been expressly permitted to set up the invalidities of certain judgments and decrees under specified circumstances. It is, therefore, not an adequate reason to hold that only by the fact that a defendant happens to be a decree-holder and further by the fact that he seeks to execute the same the courts are left without authority contemplated by O XXXIX r 2 of the CPC which is not exhaustive provision in the matters of grant of injunction.

[22] The second passage relied on by the defendant is found at p 660 of the same works and reads:

the courts have full and eminent jurisdiction to grant relief of injunctions upon proper case being made out though terms of O XXXIX might not be directly answered in *Manohar Lai Chopra v Rai Bahadur Tao Raja Seth Hiralal*. The word 'injury' used by r 2 is to be understood with respect to the right and remedy sought by the plaintiff. Only because a defendant is a decree holder, it does not follow that the plaintiff is not entitled to complain about an injury which calls for protection from the court in a suit. Cases can be conceived where the defendant is armed without decrees which are nullities or obtained upon fraud or mischief for which are not binding on the rights or interests of the plaintiff for any reasons. It is not necessary to make an exhaustive detail on the topic, for suffice it to say that even under the provisions of s 44 of the Evidence Act, a party has been expressly permitted to set up the invalidities of certain judgments and decrees under specified circumstances. It is, therefore, not an adequate reason to hold that only by the fact that a defendant happens to be a decree-holder and further by the fact that he seeks to execute the same the courts are left without authority contemplated by O XXXIX r 2 of the CPC which is not exhaustive provision in the matters of grant of injunction. The word 'injury' is of a very wide import and means, a wrong, damage or harm. So wherever the complaint is that the defendant either at the foot of a decree or otherwise is trying to cause damage or wrong to the right under adjudication of the plaintiff, the matter requires to be examined on its own merit.

[23] Throughout the whole extract of the passages above from pp 657–661, p 664, p 1115 and pp 1120 and 1121, wherein the discussion relates to the application and effect of the provision O XXXIX r 2 of the Indian Civil Procedure Code which empowers the courts in India to grant a temporary injunction restraining a defendant from committing breach of contract or 'other injury of any kind' (see p 658 of the works). When questioned by the court, learned counsel for the defendant conceded that there was no equivalent of O XXXIX r 2 of the Indian Civil Procedure Code in our Specific Relief Act 1950 or any other written law. Therefore in my view the above passages relied on by the defendant's counsel must be applied with caution. Furthermore, there are passages in the same works that may suggest that generally an injunction cannot be issued to stop an execution of a decree. For example the passages at pp 657 and 658 and also at p 1120 of the works. These passages appear below:'

At pp 657–658, the passages read:

> 80 Execution of decree — jurisdiction of court to issue — temporary injunction — It has been ruled in some decisions that the temporary injunction staying the execution of a decree proceedings may be granted under the inherent powers of the court under s 151 of the CPC.
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> The reason for holding this view is not very clearly stated in that judgment and it appears to be opposed to the principles adopted by a Full Bench of the Madras High Court in Neelaveni v Naryana Reddi followed in Krishnamwivamy v Chengalraya and in the case of Joshi Shib Prakash v Jhenguria. The principle there laid down is that when the CPC makes provision for a certain procedure the CPC must be deemed to be exhaustive in that respect and the provisions of s 151 cannot be invoked in opposition to these provision. The CPC lays down in s 94 the court shall only have power if it is given by rules framed under the CPC. It, therefore, seems impossible to hold that when rules have been framed to give the court power, further power should be given by s 151.

At p 1120, the passages read:

> according to rule 1 of O XXXIX of the CPC it is for the person applying for injunction to satisfy the court that the property in respect of which the injunction is asked for is in danger of being 'wrongfully' sold in execution of a decree. A decreeholder has enough hurdles to cross before he can get his decree and no court should lightly prevent its execution merely on the much abused ground of balance of convenience. It is the court's duty before interfering with the decree-holder's statutory right to realize the fruits of his decree to be satisfied that conditions requisite for such interference are strictly fulfilled.
>
> It has been consistently held by the Madras High Court that taking execution of a subsisting decree does not amount to an injury within the meaning of O XXXX r 2. In *Nasarvanji Cowasji v Shahazadi Begam*, also it was held that a rightful execution of a decree cannot be prevented by a temporary injunction. The court entirely agrees with the view expressed in these cases.
>
> As already held in *Hariram v Mohanlal*, and in *Jaswant Singh v Sura*, no order of injunction can be made under O XXXIX rr 1 or 2 or under s 151 to restrain a decree-holder from executing a decree in his favour so long as the decree stands and that merely because the plaintiff has brought an action for setting aside the decree and that he hopes to succeed in the suit, it cannot be held that the execution of the decree would amount to an injury. On the basis of these decisions the applicant is clearly not entitled to any order of temporary injunction restraining the non-applicants from executing their decree.'

[24] It appears to me, from the authorities referred, the general rule is that a High Court would not issue an injunction to restrain the execution of another High Court order. However the authorities also seem to suggest that the High Court was always seized of inherent jurisdiction to do justice in each case that comes before it. If it was apparent on the face of the records and on the facts and circumstances of the case that injustice was being perpetrated, I do not think the court should sit quietly and let injustice prevail. In such a situation, I think the court may fall on its inherent powers to correct the injustice, unless there is a clear statutory provision that restrains the court from exercising its discretion in such a situation pursuant to its inherent powers. If reference to passages from Nelson's Law of Injunctions are of any assistance on this issue, even in India an interim injunction could be issued to restrain execution of a decree if it can be shown that the execution would result in an injury to the party against whom the execution is directed or if it can be shown that the decree was obtained by fraud.

[25] Another reason suggested by the learned counsel for the defendant as to why the High Court should intervene in this instant case and restrain the plaintiff from executing the order was that the default judgment and the order were obtained ex-parte. They were ex parte orders although the application, in respect of the order, was inter partes application. As such, it was submitted that the orders were liable to be set aside on application by the defendant (see *Loo Chay Meng v Ong Cheng Hoe (Gamuda Sdn Bhd, garnishee)* [1990] 1 MLJ 445; *United Malayan Banking Corp Bhd v Syarikat Perumahan Lunas Sdn Bhd* [1988] 1 MLJ 546; *United Overseas Bank Ltd v Chung Khiaw Bank Ltd* [1968] 2 MLJ 85).

[26] I also will take judicial notice that as a matter of practice applications for garnishee order are made before the SAR or DR. The decision of the SAR and DR is appealable to a judge in chambers. This is provided for under O 56 of the Rules of the High Court HC 1980 ('the RHC'). If the decision is appealable to a judge in chambers, it is in my view then, that the judge reviews the SAR or DR decision and if the circumstances warrant it, order a stay of the order. In holding this view and in relation to the High Court jurisdiction to issue a restraining order against another High Court order, I am mindful of the definition of 'court' in O 1 r 4(2) of the RHC which says that 'court' means 'the High Court or any one or more judges thereof, whether sitting in court or in chambers, or the registrar'.

[27] On the facts of this case, the plaintiff does not deny in Chen's affidavit the defendant's claim that the defendant's registered address at Bintang Jaya Commercial Centre where the plaintiff's previous counsel had effected service of the cause papers was closed or unmanned. The plaintiff also did not deny or aver to the contrary that the previous counsel for the plaintiff, Mr Bong Ah Loi, had knowledge or would have known that the defendant's registered office at the above address would be closed and be untenanted because Mr Bong Ah Loi's firm was at one time acting for the defendant in another civil suit. Neither had the plaintiff filed an affidavit by Mr Bong Ah Loi to deny this claim by the defendant.

[28] The court cannot ignore this fact. Even though under the rules, service of originating process or other court documents on a corporation of company should be done at the registered address of the company or corporation, it is in my view that if it is within the knowledge of the solicitor or the firm which is going to effect the service that the registered address of the defendant (as in this case) is closed or unmanned, it is incumbent of the solicitor effecting the service to inform the defendant of the service. This is even more so when the defendant claimed that Mr Bong Ah Loi or his firm had acted for and represented the defendant in another case and was aware of the modus operandi of the defendant. I would venture to say in the circumstance such as this, Mr Bong Ah Loi or his firm should have declined to act for the plaintiff in this case to avoid any possibility of conflict of interest on the ground that he had once acted for and represented the defendant in another ongoing case in the High Court. As it turns out, Mr Bong Ah Loi and his firm had wisely withdrawn from the case at the inter-partes hearing.

[29] On the facts, I have no difficulty to conclude that the service of the writ was irregular and therefore the default judgment could be irregular. In any event, both the

default judgment and the order are ex parte orders and can be set aside. In this regard I also noted that Chen's affidavit does not contain any explanation or denial about the invoices pleaded in the plaintiff's statement of claim which are disputed by the defendant. So also is the capital payment of RM180,000.

[30] On the garnishee order, I am also of the view that the issue as to whether the defendant's money deposited in a current account with the first garnishee was a debt owing by the first garnishee to the defendant which ought to be put to trial.

[31] Having considered all the above factors, it would appear that I ought to grant the injunction. However, in the course of the arguments, plaintiff's counsel pointed out that Udam @ George Adam Talek who had filed the affidavit in support of the defendant's application had no authority to decide for the company or move the court because he was no longer the director in the defendant's company. He was a mere shareholder in the company. It is a well settled principle that a shareholder in a company has no say in the running of the company affairs. This function is the function of the Board of Directors or any one of the directors of the company assigned by the Board of Directors of the company. In *Tai Choi Yu v Syarikat Tingan Lumber Sdn Bhd* [1998] 4 MLJ 275, the Court of Appeal said at p 278 that:

> The law is clear that a mere shareholder a fortiorari, a minority shareholder has no interest legal or equitable, in the property of a company (see *Macaura v Northern Assurance Co Ltd* [1925] AC 619 at p 626).

[32] In the same case, the court also held that it is settled law that before the court can grant leave to intervene, the applicant must show that he has an interest directly related to the subject matter of the action. The interest in this context is a legal interest and not a mere commercial interest. The court went further to state that a mere commercial interest in outcome of the action is not sufficient (see also *Syawal Enterprise Sdn Bhd & Anor v Dayadiri Sdn. Bhd* [1990] 2 CLJ 297; *Malaysia Land Investment Co (Pte) Ltd v Sathask Realty Sdn Bhd & Ors* [2001] 1 MLJ 451 and *United Investment and Finance Ltd v Tee Chin Yong & Ors* [1967] 1 MLJ 31).

[33] In this instant case, it was obvious from the affidavit of Udam @ George Adam Talek that he was the applicant to set aside the garnishee order. But, it has been shown that he was only a shareholder. It was also not in dispute that the money which was the subject of the garnishee order belonged to the Defendant's company and not to Udam @ George Adam Talek. So it was the company's property.

[34] The fact that Udam @ George Adam Talek had no authority to give instructions to the defendant's counsel on behalf of the defendant, this was not disputed by the defendant counsel. On this consideration alone, I should discharge the injunction.

[35] Accordingly, I found that Udam @ George Adam Talek had no locus standi to move the court for the injunction on behalf of the defendant. Therefore I will discharge the ex parte injunction granted on 5 July 2005. Cost of this application be given to the plaintiff.

Order accordingly.

Reported by Peter Ling